

**MAINE BOARD OF REAL ESTATE APPRAISERS
BOARD MEETING
March 3, 2015
MINUTES**

MEMBERS PRESENT

WendyAnn Boston, Chair
William Dobrowolski, Vice Chair
Joseph Herlihy, Complaint Officer
Bruce Bell
Theodore Webersinn
Alan Johnson
Kenneth Charest

STAFF PRESENT

Karen Bivins, Administrator
Kim Baker, Office Specialist I
Andrew Black, Assistant Attorney General
Deborah Fales, Office Specialist I
Cathy Pendergast, Education Coordinator

MEMBERS ABSENT

None

Location: Central Conference Room

Start: 9:00 a.m.

Adjourn: 7:45 p.m.

CALL TO ORDER

The meeting was called to order at 9:00 a.m. by the Board's Chair, WendyAnn Boston.

AGENDA MODIFICATIONS

A motion was made by Dobrowolski and seconded by Webersinn to add election of officers to the agenda under other business. Unanimous.

OLD BUSINESS

Action on Minutes of December 2, 2014 Meeting

A motion was made by Dobrowolski to approve the minutes of the December 2, 2014 meeting; seconded by Charest. Unanimous.

NEW BUSINESS

Adjudicatory Hearing – Ellen L. Dyer - 2014-REA-10138 and 2014-REA-10060

The hearing in the matter of Ellen Dyer was called to order at 9:05 a.m. by Hearing Officer Rebekah Smith, Esq. Ellen Dyer was present and was represented by James Bowie, Esq. Assistant Attorney General Andrew Black represented the State in this matter. Public deliberations were conducted at the close of the hearing.

A motion was made by Dobrowolski and seconded by Webersinn to find a violation in Count 1: Pursuant to 32 M.R.S. § 14014-A(1) for lacking the trustworthiness and competence to conduct real estate appraisal activity in a manner that safeguards the interests of the public. Herlihy abstained; Bell, Boston, Charest, Dobrowolski, Johnson and Webersinn voted in the affirmative. Motion carried.

A motion was made by Charest and seconded by Webersinn to find a violation in Count 2: Pursuant to 32 M.R.S. § 14014-A(2) for committing an act or omission in the practice of real estate appraising that constitutes misrepresentation with the intent to substantially benefit herself or another person. Herlihy abstained; Bell, Boston, Charest, Dobrowolski, Johnson and Webersinn voted in the affirmative. Motion carried.

A motion was made by Johnson and seconded by Webersinn to find a violation in Counts 3, 4 and 5 pursuant to:

32 M.R.S. § 14014-A(7) for failing without good cause to exercise reasonable diligence in developing an appraisal and preparing an appraisal report;

32 M.R.S. § 14014-A(8) for demonstrating negligence and incompetence in developing an appraisal and preparing an appraisal report;

10 M.R.S. § 8003(5-A)(A)(5) for violating a Board rule, specifically Board Rules, Chapter 240 § 1 and the following USPAP standards:

- a. *Ethics Rule for Conduct by communicating a report with the intent to mislead or to defraud or that is known by the appraiser to be misleading or fraudulent; and*
- b. *Standards Rule 1-4(a) by failing to properly collect, verify, and analyze the available comparable sales data to indicate a value conclusion.*

Herlihy abstained; Bell, Boston, Charest, Dobrowolski, Johnson and Webersinn voted in the affirmative. Motion carried

A motion was made by Dobrowolski and seconded by Bell to revoke the licensee in case numbers 2014-REA-10138 and 2014-REA-10060. Herlihy abstained; Dobrowolski voted in the affirmative; Bell, Boston, Charest, Johnson and Webersinn opposed. Motion failed.

A motion was made by Charest and seconded by Webersinn to issue a reprimand; suspend the licensee for 180 days; and, issue a \$1000.00 fine for each of the (12) violations found in case numbers 2014-REA-10138 and 2014-REA-10060. Herlihy abstained; Dobrowolski, Bell, Boston, Charest, Johnson and Webersinn opposed. Motion failed.

A motion was made by Johnson and seconded by Bell to issue a reprimand; probation of the licensee for six (6) months; and, issue a \$500.00 fine for each of the (12) violations found in case numbers 2014-REA-10138 and 2014-REA-10060. Licensee shall provide monthly logs of appraisal work conducted during each month of the suspension. The Board will monitor the monthly reports and licensee shall provide sample appraisals upon request for review by the Board. Motion was withdrawn.

A motion was made by Johnson and seconded by Dobrowolski to: issue a reprimand; suspend the licensee for 30 days; issue a probation of the licensee for three (3) months to commence after the 30 day suspension period; require the licensee to provide monthly logs of appraisal work conducted during each month of the probation period; issue a \$500.00 fine for each of the (12) violations found in case numbers 2014-REA-10138 and 2014-REA-10060; and, complete a 30 hour AQB approved course on the sales comparison approach. The Board will monitor the monthly reports and licensee shall provide sample appraisals upon request for review by the Board. Payment of the fine is to be completed prior to the end of the suspension period. Licensee must provide verification of course completion and the exam must be passed prior to the end of the suspension period. The education required above may not be used toward renewal of the license. Herlihy abstained; Bell, Boston, Charest, Dobrowolski, Johnson and Webersinn voted in the affirmative. Motion carried

Administrator's Report

The administrator asked the Board to review Board Rule Chapter 220 pursuant to a continuing education audit issue involving a licensee who made a timely renewal of his license, but completed the required continuing education after renewing the license and prior to the expiration date in the 2014 license cycle.

The Board upheld their previous policy decision that all continuing education must be completed prior to renewing the license.

A motion was made by Charest and seconded by Johnson to offer a consent agreement to include a \$300.00 fine to the licensee (Owen) for non-compliance of the continuing education requirement pursuant to Board Rule Chapter 220 (2)(1). Unanimous.

The Board reviewed continuing education audit materials submitted by a licensee who made a timely renewal of his license, but completed the required continuing education after renewing the license and after the 12/31/2014 expiration date.

A motion was made by Charest and seconded by Dobrowolski to offer a consent agreement to include a \$300.00 fine to the licensee (Dignan) for non-compliance of the continuing education requirement pursuant to Board Rule Chapter 220 (2)(1). Unanimous.

The Board reviewed the continuing education audit materials submitted by Charles Hardy. Licensee's submission indicated that some Canadian continuing education had been completed during the license cycle, but none of the coursework was AQB approved, nor had a 7 hour USPAP Update Course been taken in the current license cycle. It also appeared the licensee had been non-compliant with the continuing education requirement for a number of years.

A motion was made by Dobrowolski and seconded by Webersinn to file a formal complaint pursuant to 32 MRS 14027 and Board Rule 220 (2)(1); non-compliance with the continuing education requirement. Unanimous.

The Board reviewed an email received from George Martin on behalf of his trainee, Aimee Cyr, regarding her self-discovered non-compliance of the continuing education requirement. The discovery was not made as a result of an audit.

A motion was made by Dobrowolski and seconded by Webersinn to send a letter of guidance to both the trainee and the supervisor to always be apprised of current Board laws and rules with regard to licensing compliance issues. Unanimous.

The Board reviewed an email received from Theresa Foster regarding how to document the "significant contribution" by a trainee in an appraisal report for experience credit to upgrade a license.

A motion was made by Herlihy and seconded by Charest to establish the following Board Policy regarding the documentation of a trainee's "significant contribution" to an appraisal report for experience credit to upgrade a license.

When a licensee submits an appraisal sample to the Board for review that the licensee has not signed but has "significantly contributed" to the report, the licensee and supervisor shall provide a memo to the appraisal work file detailing exactly what tasks the licensee performed in contributing to the completion of the appraisal. The memo is to be signed by both the licensee and the supervisor.

Unanimous.

Regarding the email from Bret Vicary dated 12/16/2014: *A motion was made by Herlihy and seconded by Webersinn to table review and discussion of the letter to the next meeting scheduled for April 7, 2015. Unanimous.*

Complaint Officer's Report

A motion was made by Dobrowolski and seconded by Bell to approve the letter of guidance in case number 2014-REA-10466. Boston, Bell, Charest, Dobrowolski, Johnson and Webersinn voted in the affirmative; Herlihy abstained. Motion Carried.

Review and Action on Applications

The Board reviewed the staff report of applications processed since the last meeting.

OTHER BUSINESS

Election of Officers

A motion was made by Charest and seconded by Johnson to elect Ted Webersinn as Chair. Unanimous.

A motion was made by Dobrowolski and seconded Johnson to elect Ken Charest as Vice-Chair and Joe Herlihy as Complaint Officer. Unanimous.

Meeting Schedule

The next meeting is scheduled for April 7, 2015

ADJOURN

Being no further board business the meeting was adjourned at 7:45 p. m.

Respectfully submitted,
Kim Baker, Board Clerk